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# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [REDACTED] 1921

No. [REDACTED] 207

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FIDELITY AND DEPOSIT COMPANY OF MARYLAND,  
APPELLANT,

vs.

THE UNITED STATES.

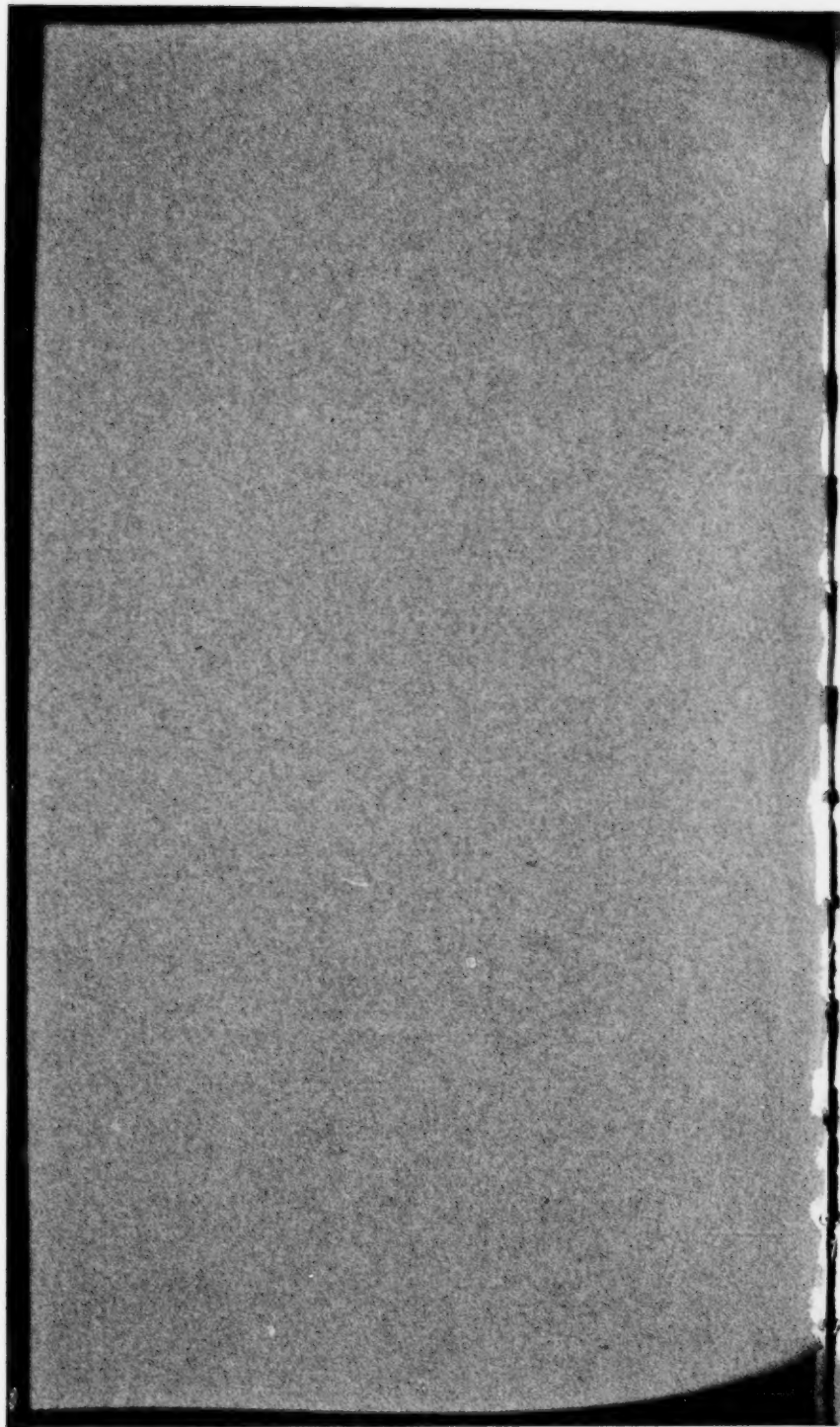
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APPEAL FROM THE COURT OF CLAIMS.

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FILED JANUARY 24, 1921.

(28,055)



(28,055)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 698.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,  
APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1

## Court of Claims.

No. 33976.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

vs.

THE UNITED STATES.

*I. History of Proceedings.*

On July 25, 1918, the claimant filed its original petition.

On November 26, 1918, by leave of court, the defendant filed a demurrer to claimant's petition.

On December 16, 1919, the demurrer was argued and submitted.

On January 13, 1919, the court filed an order overruling defendant's demurrer without prejudice, and allowing claimant sixty (60) days within which to file certain papers.

On March 10, 1919, the claimant filed its amended petition, and Exhibit "A," which are as follows:

*II. Amended Petition and Exhibit "A."*

Filed March 10, 1919.

To the Honorable the Chief Justice and the judges of the Court of Claims:

The claimant, the Fidelity and Deposit Company of Maryland, a corporation duly created and organized under the laws of the Commonwealth of Maryland, and by leave of this Honorable Court under its order dated January 13, 1919 (October Term, 1918), files this its amended petition in the above entitled cause, and shows the Court as follows:

*I.*

2 The claimant, the Fidelity and Deposit Company of Maryland, is a corporation duly created and existing under the laws of the Commonwealth of Maryland, (having its principal office in the City of Baltimore, in the Commonwealth of Maryland), having been incorporated on or about the 15th day of February, A. D. 1890, its charter having been granted by Art. 23 of the Code of Public General Laws of Maryland entitled "Corporations," and amended by the special Acts of the Legislature of the State of Maryland approved April 3, 1890 (chapter 263 of the laws of Maryland, 1890); April 6, 1894 (chapter 330 of the laws of Maryland, 1894); April 7, 1898 (chapter 358 of the laws of Maryland, 1898); April 7, 1900 (chapter 5360 of the laws of Maryland, 1900), and April 11, 1910 (chapter 643 of the laws of Maryland, 1910), as shown by a

certified copy of its charter, marked claimant's "Exhibit A," obtained under the above mentioned laws, hereto attached and prayed to be read and considered a part of this petition:

That the aforesaid claimant has been continuously since the above date (February 15, 1890), acting and doing business as a corporation created and existing under the laws of the Commonwealth of Maryland, as aforesaid, up to and including the present date.

## II.

That this claimant by reason of the power and authority conferred upon it by its charter and amendments thereto, as shown by the said certified copy of the charter hereinbefore referred to and marked claimant's "Exhibit A," was authorized and empowered to carry on the following classes of business covering the period from July 1, 1898, to June 30, 1902, viz.:

To receive money and other personal property in trust for safe-keeping or storage, or otherwise—to accept and execute trusts of every description as natural persons may—to buy, sell, convey, develop, improve and deal in real estate—to invest and re-invest such trust funds as may be entrusted to them, and to change such investments at its pleasure—and to receive money as may be agreed upon between it and the persons making such deposits—to act as agent for the purpose of issuing, registering or countersigning certificates of stocks, bonds or other evidences of debt of any State, corporation, association, municipality or public authority, on such terms as may be agreed upon—to deal in exchange foreign and domestic and in every and all description of properties, personal effects, securities, mortgages, land, certificates of indebtedness, stocks of incorporated companies, rates, loans on bonds of the United States, or of any city, county, or municipality, or of any incorporated company or any individual—and to insure the fidelity of persons holding places of trust or responsibility in, to or under any State, county, city, corporation, company, person or persons whatsoever—to become security for the faithful performance of any trust, office, duty, contract of agreement and to supersede any judgment, or to go upon any appeal or other bond—and to guarantee, endorse and secure payment and punctual performance and collection of notes, debts, bills of exchange contracts, bonds, accounts, clauses, rents, annuities, mortgages, choses in action, evidences of debt, certificates of property or value, checks and titles to property, indebtedness of individuals, of companies, partnerships, contracts, loans of States, cities, counties, and municipalities on such terms and commissions as may be agreed upon or established by claimant and the parties dealing therewith.

That the principal business of the claimant (almost exclusively so) covering the period from June 13, 1898, to July 1, 1902, inclusive, was that of "acting either solely or jointly as surety or sureties, to insure and become surety for the fidelity of persons holding places of trust or responsibility, public or private, in, to or under the United States Government and in, to or under any foreign government and to become surety either solely or jointly with

one or more other sureties for the faithful performance of any trust, office, duty or contract, to be discharged or performed in any jurisdictions aforesaid and to sign, make, and execute bail, bonds, and recognizances and generally to act as surety for the faithful appearance and surrender of individuals," otherwise known as the "general surety and bonding business," throughout the United States and its territories, having its principal or home office in the city of Baltimore, in the State of Maryland.

### III.

That your petitioner is advised, after diligent search up to and including the year 1902, that no statutes of the Commonwealth of Maryland relating to the subject of banking or trust companies so far as they relate to a definition of either, can be found.

### IV.

On or about the 13th day of June, 1898, the President of the United States, approved an Act, entitled "An Act to provide ways and means to meet war expenditures and for other purposes" (30 Stat., 448), section 2 of said Act reading as follows:

"That from and after July 1, 1898, a special tax shall be, and hereby is, imposed annually as follows, that is to say:

Bankers using or employing a capital not exceeding the sum of twenty-five thousand dollars (\$25,000) shall pay fifty dollars (\$50); when using or employing a capital exceeding twenty-five thousand dollars (\$25,000) for every additional thousand dollars in excess of twenty-five thousand dollars (\$25,000) two dollars (\$2), and  
5 in estimating capital, surplus shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year.

Every person, firm, or company, and every incorporated or other bank, having a place of business where credits are opened by the deposit or collection of money or currency, subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or sale, shall be a banker under this Act; Provided, That any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors and which does no other business of banking, shall not be subject to this tax."

These provisions were amended by 31 Stat., 938, in respect not material to the present case.

### V.

By the Act of April 12, 1902 (32 Stat., 96, 97), Section 2 of the Act of June 13, 1898, above referred to, together with all amendments thereto, was repealed to take effect July 1, 1902.

## VI.

On July 27, 1912, the President approved another Act entitled "An Act extending the time for the repayment of certain War Revenue taxes erroneously collected (37 Stat., 240)." Said Act reads as follows:

"That all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of section 29 of the Act of Congress approved June 13, 1898, known as the war-revenue tax, or of any sums alleged to have been excessive or in any manner wrongfully collected under the provisions of said Act, may be presented to the Commissioner of Internal Revenue on or before the first day of January, 1914, and not thereafter.

Sec. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of any moneys of the United States not otherwise appropriated to such claimants as have presented or shall hereafter present their claims and shall establish such erroneous and illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provision of the Act aforesaid."

## VII.

That on or about the 4th day of August, 1898, the 9th day of August, 1899, the 26th day of July, 1900, and the 31st day of July, 1901, the Collector of Internal Revenue in the city of Baltimore, as aforesaid, acting for and on behalf of the United States and assuming to act as such and under section 2 of the Act of Congress approved June 13, 1898, assessed and collected from your petitioner as a Special Bankers' Tax sums aggregating the sum of eight thousand, three hundred dollars (\$8,300), the tax aforesaid being assessed as a Special Bankers' Tax upon the following basis, viz:

Capital as arbitrarily assumed by the Collector of Internal Revenue to have been used or employed by the claimant in the business of a banker under Section 2 of the War Revenue Act of 1898 aforesaid:

For the fiscal year ending June 30, 1898, twenty-five thousand dollars (\$2,500) at two dollars per thousand.....	\$50
For the year ending June 30, 1899, one million one hundred twenty-five thousand dollars (\$1,125,000).....	2,250
7 For the year ending June 30, 1900, one million five hundred thousand dollars (\$1,500,000).....	3,000
For the year ending June 30, 1901, one million five hundred thousand dollars (\$1,500,000).....	3,000
Total tax on capital .....	<u>\$8,300</u>

as shown by the records of the office of the Commissioner of Internal Revenue, Treasury Department, hereby referred to and prayed to



be considered a part of this petition, consisting of the assessment returns, records of payments, and receipts of the Collector of Internal Revenue, which are hereby referred to and prayed to be considered a part hereof.

### VIII.

That no part of the capital or surplus of this claimant was used or employed as a banker or in the banking business within the meaning of Section 2 of the War Revenue Act of June 13, 1898, aforesaid. To the contrary, the entire capital and surplus of the claimant company was permanently invested in stocks, bonds, and other securities covering the entire taxing period, and the use of the aforesaid capital and surplus of the claimant company was confined entirely to the Surety Department, or business of this claimant, other than as a banker or in the banking business, covering the entire taxing period, from July 1, 1898, to June 30, 1902.

### IX.

That on or about the 22d day of November, 1913, your petitioner, by its attorneys, duly filed an application in the Treasury Department, under the Refunding Act of Congress of July 27, 1912, aforesaid, praying the refund of all of the said moneys, through the

Collector of Internal Revenue located in the City of Baltimore, in the State of Maryland, as aforesaid (which was the procedure required by the Treasury Department), who, in the regular course of his official business, certified the same to the Treasury Department for its consideration, as shown by the records of the office of the Commissioner of Internal Revenue of the Treasury Department, hereby referred to and prayed to be read and considered a part of this petition.

Said application was on Form 46 of the office of the Commissioner of Internal Revenue of the Treasury Department, as required, and was in all respects complete, regular, and in accordance with the law and regulations, and was accompanied by all the necessary evidence and proof of facts, the same consisting of a Power of Attorney of the claimant to Lyon and Lyon, as Attorneys, to make such claims; two receipts of the Collector of Internal Revenue of the District of Maryland, showing the payment of the taxes for the fiscal years ending 1898 and 1899, and the affidavit of the claimant showing the loss of two other receipts showing the payment of taxes for the fiscal years ending 1900 and 1901, and which, for that reason, could not be furnished; by another affidavit of the claimant showing that its capital and surplus covering the period from July 1, 1898, to June 30, 1902, upon which the tax was assessed and collected, was not used or employed in the banking business, but was permanently invested in stocks, bonds and other securities as hereinbefore stated during the entire taxing period from July 1, 1898, to June 30, 1902, and that any banking business done during this period was done entirely by means of the depositors' moneys, these being the reasons set forth by the claimant in the claim for refund to show the tax was



erroneous and illegal and refundable to it under the Act of July 27, 1912, aforesaid. The facts alleged in the said application were not traversed or denied by the Secretary of the Treasury, or by any representative of the United States. Although said application was in all respects complete and in due form, nevertheless, on or about the 19th day of April, 1917, the Secretary of the Treasury refused and denied the said application and has continuously denied, and still denies, and refuses to pay your petitioner the money asked for and demanded in its application as aforesaid, all of which facts being shown by the records of the office of the Commissioner of Internal Revenue of the Treasury Department, and being hereby referred to, are prayed to be read and considered a part of this petition.

### X.

Your petitioner is advised by its counsel and therefore avers that the taxes collected from it are erroneous and illegal, which reasons were urged at the time the claim for refund was pending in the Treasury Department; and which are the same reasons urged here, viz.:

a. Because the entire amount of the said claimant's capital and surplus were, at the time said assessments were levied and during the entire taxing period from July 1, 1898, to June 30, 1902, permanently invested in stocks, bonds, securities and other property, and were not at any time from July 1, 1898, to June 30, 1902, nor any part thereof, used or employed in the banking business.

b. Because the entire capital and surplus of the claimant during the entire period of taxation aforesaid was confined to and used and employed exclusively by the claimant in its surety and bonding business, or business of the claimant other than as a banker or in the banking business, and was not used or employed as a banker or in the banking business within the meaning of Section 2 of the War Revenue Act of June 13, 1898.

c. Because the petitioner was not at the time the said assessments were levied and the payment of the taxes made, or at any time during the taxing period (from July 1, 1898, to June 30, 1902), a banker or engaged in the banking business within the meaning of the War Revenue Act of June 13, 1898.

That the moneys which were collected from your petitioner as taxes on its capital and surplus as being used or employed in the banking business aforesaid are refundable to it under the terms and provisions of the Refunding Act of July 27, 1912, as hereinbefore set forth, and that the refusal of the Secretary of the Treasury to refund such moneys is directly in violation of the said Act.

### XI.

No action upon this claim other than herein set forth has been taken before Congress or any other of the departments of the Government.

## XII.

Your petitioner avers that there is justly due and owing to it on account of matters hereinbefore set forth the sum of eight thousand three hundred dollars (\$8,300), after deducting all just off-sets and demands on the part of the United States, and that it is the sole owner of the claim herein sued upon and that no assignment or transfer of the claim or any part thereof or any interest in the same has been made, and that it is a citizen of the United States and loyal to the same and it has not aided or abetted in any manner or given comfort to any sovereign or government that has been at war with the United States Government.

Wherefore, your petitioner prays judgment against the United States for the sum of eighty-three hundred dollars (\$8,300).

FIDELITY AND DEPOSIT CO. OF  
MARYLAND,  
By LYON AND LYON,  
*Attorneys for the Claimant.*

11 DISTRICT OF COLUMBIA,  
*City of Washington, ss:*

Personally appeared before me, a Notary Public in and for the District of Columbia, R. B. H. Lyon, who being duly sworn according to law, deposes and says that he is a member of the firm of Lyon and Lyon and that he is duly authorized to make oath in this cause by virtue of power of attorney herewith filed, and that he has read and understands the foregoing petition and that the facts herein set forth are true in substance and fact as he is informed and believes.

(Signed)

R. B. H. LYON.

Subscribed and sworn to before me this 1st day of March, A. D. 1919.

(Signed)

GEO. W. SMITH,  
*Notary Public.*

My commission expires March 11, 1920.

12 CLAIMANT'S EXHIBIT "A."

*Charter of the Fidelity and Deposit Company of Maryland.*

This Company was formed under the provisions of Article 23 of the Code of Public General Laws of Maryland, title "Corporations," its certificate of incorporation having been signed by the Chief Judge of the Supreme Bench of Baltimore City.

The Legislature of Maryland, Session of 1890, made the Charter of the Company perpetual and enlarged its powers.

Section 8, referring to Cecil County, was repealed by the Legislature of 1894.

*Certificate of Incorporation.*

This Certificate of Incorporation, made this fifteenth day of February, in the year eighteen hundred and ninety, by Lloyd L. Jackson, Thomas C. Basshor, James Sloan, Jr., H. Crawford Black, Joseph R. Stonebraker, George W. Bishop, Edwin Warfield, George Cator, Clinton P. Paine, Robert Ober and George Warfield, all citizens of the State of Maryland.

Witnesseth, That the said Lloyd L. Jackson, Thomas C. Basshor, James Sloan, Jr., H. Crawford Black, Joseph R. Stonebraker, George W. Bishop, Edwin Warfield, George Cator, Clinton P. Paine, Robert Ober and George Warfield, do hereby form a corporation by the name and for the objects herein specified, to wit:

First. The name of the corporation shall be The Fidelity Loan and Trust Company of Baltimore City.

Second. The said corporation shall have power, and its objects and purposes shall be to receive money and other personal property in trust for safe keeping or storage, or otherwise, to accept and  
13 execute trusts of every description as natural persons may, to buy, sell, convey, develop, improve and deal in real estate, to invest and to reinvest such trust funds as may be entrusted to them, and to change such investments at its pleasure, and to receive money on deposit at interest or otherwise as may be agreed on between it and the persons making such deposits.

Third. The duration of said corporation shall be forty years.

Fourth. The operation of said corporation shall be carried on within the State of Maryland and elsewhere, and the principal office shall be in the City of Baltimore.

Fifth. The capital stock of said corporation shall be five hundred thousand dollars, divided into ten thousand shares of stock of the par value of fifty dollars.

Sixth. The Directors of said Company shall be twelve in number, and the following named persons shall be directors who shall manage the concerns of the corporation for the first year: Lloyd L. Jackson, Thomas C. Basshor, James Sloan, Jr., H. Crawford Black, Joseph R. Stonebraker, George W. Bishop, Edwin Warfield, George Cator, Clinton P. Paine, Robert Ober, George Warfield and Wilbur F. Jackson.

In witness whereof, The said Lloyd L. Jackson, Thomas C. Basshor, James Sloan, Jr., H. Crawford Black, Joseph R. Stonebraker, George W. Bishop, Edwin Warfield, George Cator, Clinton P. Paine, Robert Ober and George Warfield have hereunto signed

their names and set forth their seals this 15th day of February, 1890.

14

LLOYD L. JACKSON.	[SEAL.]
THOMAS C. BASSHOR.	[SEAL.]
JAMES SLOAN, Jr.	[SEAL.]
H. CRAWFORD BLACK.	[SEAL.]
JOS. R. STONEBRAKER.	[SEAL.]
GEORGE W. BISHOP.	[SEAL.]
EDWIN WARFIELD.	[SEAL.]
GEORGE CATOR.	[SEAL.]
CLINTON P. PAINE.	[SEAL.]
ROBERT OBER.	[SEAL.]
GEORGE WARFIELD.	[SEAL.]

Test:

ROBERT A. THURSBY.

STATE OF MARYLAND,

*City of Baltimore:*

I hereby certify, That on this fifteenth day of February in the year eighteen hundred and ninety, before the subscriber, a Justice of the Peace of said State, in and for said City, personally appeared Lloyd L. Jackson, Thomas C. Basshor, James Sloan, Jr., H. Crawford Black, Jos. R. Stonebraker, George W. Bishop, Edwin Warfield, George Cator, Clinton P. Paine, Robert Ober and George Warfield, and acknowledged the foregoing certificate of incorporation to be their act.

ROBERT A. THURSBY,  
*J. P.*

I, Henry D. Harlan, Judge of the Supreme Bench of Baltimore City, do hereby certify that I have carefully examined the foregoing certificate of incorporation, and I do hereby determine that the said certificate is in conformity with law and proper to be received.

HENRY D. HARLAN.

Recd. for Record Feb. 15th, 1890, at 3 O'clk. P. M. same day recorded & Exd. per Jas. Bond, Clerk.

I hereby certify that the foregoing is a true copy taken from Liber J. B. No. 27 folio 470 &c. one of the Charter Records of Baltimore City.

15 In testimony whereof I hereto set my hand and affix the seal of the Superior Court of Baltimore City on this the 25th day of January, A. D. 1919.

STEPHEN C. LITTLE,

[SEAL.] *Clerk of the Superior Court of Baltimore City.*

MARYLAND, *set:*

I, Carroll T. Bond, Associate Judge of the Supreme Bench of Baltimore City, assigned to, and presiding in the Superior Court of Baltimore City, in the Eighth Judicial Circuit of said State, do

certify, that the foregoing attestation of Stephen C. Little, Clerk of the said Superior Court of Baltimore City, is in due form and by the proper officer.

Given under my hand, at the City of Baltimore, this twenty-fifth day of January, A. D. 1919.

CARROLL T. BOND.

STATE OF MARYLAND,  
*Baltimore City, set:*

I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, do hereby certify, That the Honorable Carroll T. Bond, who has certified and signed the above attestation, was, at the time of so doing, Presiding Judge of the Superior Court of Baltimore City, in the Eighth Judicial Circuit of the State of Maryland, duly Commissioned and Qualified and that to all acts done by him in that capacity, full faith and credit are due and ought to be given, and that his signature thereto is genuine.

In testimony whereof, I hereunto subscribe my name and affix the Seal of the Superior Court of Baltimore City, on this twenty-fifth day of January, A. D. 1919.

STEPHEN C. LITTLE,

[SEAL.] *Clerk of the Superior Court of Baltimore City.*

16 I hereby certify, That the foregoing is a true copy taken from the original received for Record February 15, 1890, at 3 o'clock P. M.

In testimony whereof, I hereunto set my hand and affix the seal of the Superior Court of Baltimore City this 17th day of February, A. D. 1890.

JAMES BOND,

[SEAL.] *Clerk of the Superior Court of Baltimore City.*

*Amendments to Charter.*

Chapter 263 of the Laws of Maryland, 1890.

An Act to Change the Name of The Fidelity Loan and Trust Company of Baltimore City to the "Fidelity and Deposit Company of Maryland" and to Amend and Define the Powers of said Company.

Section 1. Be it enacted by the General Assembly of Maryland, That the name of The Fidelity Loan and Trust Company of Baltimore City, be and the same is hereby changed to that of the "Fidelity and Deposit Company of Maryland," and by such last mentioned name shall have perpetual succession and may adopt a corporate seal and may sue and be sued.

Section 2. And be it further enacted, That the number of directors of said Company shall be increased from twelve as stated in the certificate of incorporation of said Company to twenty-five, and that said twelve directors shall have power to elect the additional

thirteen required to fill up said board of twenty-five directors, and said twenty-five directors shall serve as the directors of said Company until the first Tuesday of May, eighteen hundred and ninety-one, (1891) or until their successors are duly elected and qualified;

Section 3. And be it further enacted, That said Company shall have power to receive money on deposit, to act as agent for the purpose of issuing, registering, or countersigning certificates of stocks, bonds or other evidence of debt of any State, corporation, association, municipality or public authority on such terms as may be agreed upon, to deal in exchange, foreign and domestic, and in every and all description of properties, personal effects, securities, mortgages, land, certificates of indebtedness, stocks of incorporated Companies, notes, loans on bonds of the United States, or of any city, county, or municipality or of any incorporated Company, or any individual.

Section 4. And be it further enacted, That said Company shall be and is hereby authorized and empowered to insure the fidelity of persons holding places of trust or responsibility in, to or under any State, county, city, corporation, company, person or persons whatsoever; to become security for the faithful performance of any trust, office, duty contract or agreement, and to supersede any judgment, or to go upon any appeal or other bond; and it is further authorized to become sole surety in all cases where by law two or more sureties are required for the faithful performance of any trust or office and it shall and may be lawful for any court register, clerk or other officer to approve said Company as sole surety in all such cases, but in such cases the officers and affairs of said Company may be subject to an examination by such court, register clerk or other officers; and it shall be lawful for said Company to stipulate and provide for indemnity from the parties aforesaid for whom it shall so become responsible, and to enforce any bond, contract, agreement, pledge or other security made or given for that purpose.

Section 5. And be it further enacted, That any and every court into which moneys may be paid or deposited by agreement of parties order, judgment or decree of such court may order and direct the same to be deposited with said Company; and any individual or administrator, guardian, committee, receiver, assignee, trustee, State, county or municipal government or corporation or public officer or any person or persons acting for others, having the custody of any bonds, stocks, securities, moneys or valuables shall be authorized to deposit the same for safe keeping with the said Company.

Section 6. And be it further enacted, That said Company shall have power to guarantee, endorse and secure the payment and punctual performance, and collection of notes, debts, bills of exchange, contracts, bonds, accounts, claims, rents, annuities, mortgages, choses in action, evidences of debt, certificates of property or value, checks and the titles to property, indebtedness of individuals, of Companies, partnerships, contracts, loans of States, cities, counties and municipalities on such terms or commissions as may

be agreed upon or established by said Company and the parties dealing therewith.

Section 7. And be it enacted, That said Company may receive upon storage deposit or otherwise, merchandise, specie, plate, bullion, stocks, promissory notes, certificates and evidences of debt, contracts, and all other personal property, and advance money thereupon on such terms as may be established or approved by said Company that in all cases in which public officers, or municipal or private corporations are authorized to deposit money, stocks, bonds or evidences of debt, such deposits by such officers or corporations may be made with said Company.

Section 8. And be it enacted, That said Company shall not be authorized by the provisions of this act to insure the fidelity of any person residing in Cecil County or to receive on deposit any money or other property from any person residing in Cecil County.

19 Section 9. And be it enacted, That this act shall take effect from the date of its passage.

Approved, April 3rd, 1890.

[The Great Seal of the State of Maryland.]

ELIHU E. JACKSON,  
*Governor.*

JOHN HUBNER,  
*Speaker of the House of Delegates.*  
R. F. BRATTAN,  
*President of the Senate.*

STATE OF MARYLAND, *set:*

I, Spencer C. Jones, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is a full and true copy of the Act of the General Assembly of Maryland, of which it purports to be a copy, as taken from the Original Law, belonging to, and deposited in the office of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of said Court of Appeals this 5th day of April, A. D. 1890.

[SEAL.]

SPENCER C. JONES,  
*Clerk Court of Appeals of Maryland.*

*Chapter 330 of the Laws of Maryland, 1894.*

An Act to Amend the Act of 1890, Chapter 263, by Repealing Section 8 of said Act, Which said Section Relates to Cecil County.

Section 1. Be it enacted by the General Assembly of Maryland, that Section 8, of the Acts of 1890, Chapter 263, be and the same is hereby repealed, provided, however, that nothing herein contained



shall operate to repeal or amend in any way any of the other Sections of said Act.

20 Section 2. And be it further enacted, That this Act shall take effect from the date of its passage.

Approved April 6th, 1894.

[The Great Seal of the State of Maryland.]

FRANK BROWN,

*Governor.*

JOHN WALTER SMITH,

*President of the Senate.*

JAMES H. PRESTON,

*Speaker of the House of Delegates.*

Office of the Secretary of the Senate.

I hereby certify that the foregoing is a true copy of an Act of the General Assembly of Maryland, passed at the January Session, 1894.

J. ROGER McSHERRY,

*Secretary of the Senate.*

*Chapter 358 of the Laws of Maryland, 1898.*

An Act to Authorize the Stockholders of the Fidelity and Deposit Company of Maryland to Change the Name of Said Corporation.

Section 1. Be it enacted by the General Assembly of Maryland, That the stockholders of the Fidelity and Deposit Company of Maryland, a corporation chartered under the general laws of the State of Maryland, as the Fidelity Loan and Trust Company of Baltimore City, and the name of which was changed to the Fidelity and Deposit Company of Maryland, and its powers enlarged by an Act of the General Assembly of Maryland of 1890, Chapter 263, be, and they are, hereby authorized by a two-thirds vote of the stock of said corporation to change the name of said corporation at a special meeting called upon ten days' written notice to said stockholders, specifying the purpose of said meeting, and should the stockholders

21 so vote to change the name of said corporation at said meeting the President and Secretary shall make and record a certificate of the change of said name in the office of the clerk of the Superior Court of Baltimore City, and thereafter the said corporation shall be known by the name to which it may be so changed, and by said last mentioned name shall have perpetual succession, and may adopt a corporate seal, and may sue and be sued, provided, however, and it is hereby expressly declared that the change of the name thereby made shall in no wise affect the rights, privileges and powers of said corporation, and shall in no wise impair or affect existing contracts, engagements, debts and liabilities of said corporation with or to other persons, or of other persons with or to said corporation.

Section 2. And be it further enacted, That this Act shall take effect from the date of its passage.

Approved April 7, 1898.

[The Great Seal of the State of Maryland.]

LLOYD LOWNDES,  
*Governor.*

LOUIS SCHAEFFER,  
*Speaker of the House of Delegates.*

J. WIRT RANDALL,  
*President of the Senate.*

*Chapter 536 of the Laws of Maryland, 1900.*

An Act to Amend, Confirm, and Enlarge the Powers of the Fidelity and Deposit Company of Maryland.

Section 1. Be it enacted by the General Assembly of Maryland, That the Fidelity and Deposit Company of Maryland, be and the same is hereby authorized and empowered, either solely or jointly with one or more sureties, to insure and become surety for the  
22      fidelity of persons holding places of trust or responsibility, public or private, in, to or under the United States Government, or any colony, province or dependency thereof, and, in, to or under any foreign country or government, or any colony, province, department, city or county thereof; and to become surety, either solely or jointly with one or more other sureties, for the faithful performance of any trust, office, duty or contract, to be discharged or performed in any of the countries or within any of the jurisdictions aforesaid; and in all such cases, including those where by law, order, decree, rule or regulations, one or more sureties are required upon any bond, recognizance or stipulation, or for the faithful performance of any trust, office, duty or contract, the powers of said Company, shall embrace authority to execute, either solely or jointly with one or more other sureties, any bond, recognizance, stipulation or contract, having relation thereto.

Section 2. And be it further enacted, That the said Company be and it is hereby authorized and empowered to sign, make and execute bail bonds and recognizances and generally to act as surety for the faithful appearance and surrender of individuals as provided by any process of law or order of Court, of any State of the United States, or of the United States Government, or of any territory or dependency thereof, or of any foreign country, State or government, or of any branch or part of any foreign country, State or government.

Section 3. And be it further enacted, That the Directors of the Fidelity and Deposit Company of Maryland be and the same are hereby authorized and empowered, either at a general or special meeting, to name, constitute and appoint agents or attorneys, in any of the countries, and within any of the jurisdictions aforesaid, and to

invest such agents or attorneys with power and authority, on its behalf as surety, to make, sign, execute, deliver, justify upon, and attach the Corporate Seal of said Company to, any bond, recognizance, stipulation or contract, within the scope of the chartered powers of said Company, and the said Directors are further authorized and empowered to provide that the execution by said agents or attorneys, of such bonds, recognizances, stipulations and contracts, shall be binding upon said Company.

Section 4. And be it further enacted, That the said Company shall have the powers herein granted, and also all the powers heretofore granted to it by its Articles of Incorporation under the General Incorporation Laws of the State of Maryland, and in addition, all powers conferred upon it by Chapter 263 of the Acts of the General Assembly of Maryland, passed at the Session of 1890, and Chapter 330 of the Acts of the General Assembly of Maryland, passed at the Session of 1894 and Chapter 354 of the Acts of the General Assembly of Maryland, passed at the Session of 1898, and shall have the right to exercise the same in any of the countries, or within any of the jurisdictions aforesaid.

Section 5. And be it further enacted, That this Act shall take effect from the date of its passage.

Approved April 7, 1900.

[The Great Seal of the State of Maryland.]

JOHN WALTER SMITH,

*Governor.*

LLOYD WILKINSON,

*Speaker of the House of Delegates.*

JOHN HUBNER,

*President of the Senate.*

STATE OF MARYLAND, *scilicet*:

I, Allan Rutherford, Clerk of the Court of Appeals of Maryland, do hereby certify, that the foregoing is a full and true copy of the Act of the General Assembly of Maryland of which it purports to be a copy, as taken from the Original Law belonging to and deposited in the office of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal of the said Court of Appeals, this nineteenth day of April, A. D. 1900.

[SEAL.]

ALLAN RUTHERFORD,

*Clerk Court of Appeals of Maryland.*

*Chapter 643 of the Laws of Maryland, 1910.*

An Act to Amend the Charter of the Fidelity and Deposit Company of Maryland by Amending Its Powers as Prescribed in Its Original Certificate of Incorporation, as Heretofore Amended by Chapter

263 of the Acts of 1890, Chapter 330 of the Acts of 1894, Chapter 358 of the Acts of 1898, and Chapter 536 of the Acts of 1900, by Repealing Paragraph Second in the Original Certificate of Incorporation and by Repealing Sections 3, 5 and 7 of Chapter 263 of the Acts of 1890, and by Repealing and Re-enacting with Amendments Section 4 of Chapter 263 of the Acts of 1890, and by Repealing and Re-enacting with Amendments Section 4 of Chapter 536 of the Acts of 1900, and by Adding Additional Sections Enlarging the Powers of Said Corporation.

Section 1. Be it enacted by the General Assembly of Maryland, That the charter of the Fidelity and Deposit Company of Maryland, as set forth in its original certificate of incorporation and in Chapter 263 of the Acts of 1890, chapter 330 of the Acts of 1894, Chapter 354 of the Acts of 1898, and Chapter 536 of the Act of 1900 be and the same is hereby amended as set forth in the following sections.

Section 2. And be it further enacted, That the paragraph numbered "Second" of the original certificate of incorporation of 25 the Fidelity Loan and Trust Company of Baltimore City recorded in the Superior Court of Baltimore City on the 15th of February, 1890, the name of which said Corporation was by the Act of the General Assembly of Maryland of 1890, Chapter 263 changed to the Fidelity and Deposit Company of Maryland be and the same is hereby repealed and annulled.

Section 3. And be it further enacted, That Sections 3, 5 and 7 of Chapter 263 of the Acts of 1890 be and the same are hereby repealed.

Section 4. And be it further enacted, That Section 4 of Chapter 263 of the Acts of 1890 be and the same is hereby repealed and re-enacted, so as to read as follows:

Section 4. And be it further enacted, That said Company shall be and is hereby authorized and empowered to insure the fidelity of any person, partnership, association, corporation or company holding any place or position of trust or responsibility or owing any duty, contractual or otherwise, to any other person, partnership, association, corporation, company or to any city, county, State, territorial or foreign government, or to the United States Government, or any officer, board, commissioner, department or other Governmental agency of any such governments, to become surety or go upon any bond, undertaking or other obligation for the faithful performance of any trust, office, duty, contract, obligation or agreement; to become surety, or go upon any bond, undertaking or other obligation whatsoever nature, character or description, including all bonds, undertakings or other obligations permitted, required or authorized by any order, ordinance, rule, regulation or law in connection with any judicial proceeding, or with the performance of any duty imposed or act permitted by law, that said Company shall be and is hereby authorized and empowered to become sole surety in all cases where by law or order two or more sureties are re-

26 quired, and it shall be law for any Court, register, clerk or other officer or person, whose duty it is to approve any bond or other obligation permitted, required or authorized by law or order to be executed by two or more sureties, to approve such bond or obligation when executed by said Company as sole surety. That said Company shall be and is hereby authorized and empowered to receive and hold collateral and indemnity of any nature or kind whatsoever to secure it against loss on any bond or other obligation issued by it and to enforce any bond, contract, obligation, pledge or other security made or given for that purpose.

Section 5. And be it further enacted, That said corporation is also hereby authorized and empowered to insure any person or persons from death or injury on account of any accident or casualty whatsoever and also to insure any person or persons against sickness or disease of any sort or description or disability arising therefrom.

Section 6. And be it further enacted, That said corporation shall also have the power to insure any person, firm or corporation against liability for negligence and torts of any nature or description and against any and all loss, damage or liability arising from or occasioned by or through any negligence, wrongful act or accident whatsoever, or by theft, larceny, robbery or burglary, also against any damage to plate glass and against any loss of or damage to any personal property whatsoever, whether the same be in possession of the person or firm or corporation insured, or elsewhere and whether said loss or damage be due to accident, negligence or any other cause except that nothing herein contained shall authorize the said corporation to insure against loss by fire.

Section 7. And be it further enacted, That the said Company shall also have power to enter into an agreement with any administrator, guardian, receiver, trustee or other fiduciary for whom  
27 it has become surety, for the deposit, subject to check or the safekeeping of any and all money, assets and other property for which he is or may be responsible, with any bank, savings bank, safe deposit or trust company selected by such fiduciary, in such manner as to prevent the withdrawal or alienation of such money, assets or other property or any part thereof from such banks, savings bank, safe deposit or trust company, without the countersignature or written consent of the said Company or its agents or an order of the Court or a Judge thereof having jurisdiction over such fiduciary, made on such notice to said Company as the Court or Judge may direct.

Section 8. And be it further enacted, That Section 4, Chapter 536 of the Acts of 1900, be and the same is hereby repealed and re-enacted so as to read as follows:

Section 4. And be it further enacted, That the said corporation shall have the authority and right to exercise any of the powers possessed by it in the State of Maryland and in any of the States,

Territories or possessions of the United States and in any foreign country or countries.

Approved, April 11, 1910.

[The Great Seal of the State of Maryland.]

AUSTIN L. CROTHERS,  
*Governor.*

ADAM PEOPLES,  
*Speaker of the House of Delegates.*  
A. P. GORMAN, JR.,  
*President of the Senate.*

STATE OF MARYLAND, *set:*

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is a full and true copy of the Act of the General Assembly of Maryland of which it purports to be a copy, as taken from the Original Law belonging to and deposited in the office of the Clerk of the Court of Appeals aforesaid:

In testimony whereof, I have hereunto set my hand as  
28 Clerk and affixed the seal of the said Court of Appeals, this  
27th day of April, 1910.

[Seal Court of Appeals.]

C. C. MAGRUDER,  
*Clerk Court of Appeals of Maryland.*

STATE OF MARYLAND, *set:*

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing are full and true copies of the Acts of the General Assembly of Maryland of which they purport to be copies, as taken from the original laws belonging to and deposited in the office of the Clerk of the Court of Appeals aforesaid.

In testimony whereof, I hereunto set my hand and the seal of the said Court of Appeals affix- this fourth day of February, nineteen hundred and nineteen.

[SEAL.]

CALEB C. MAGRUDER,  
*Clerk of the Court of Appeals of Maryland.*

The State of Maryland, Executive Department.

I, Emerson C. Harrington, Governor of the State of Maryland, and having control of the Great Seal thereof, Do Hereby Certify: That Caleb C. Magruder, who has signed the annexed Certificate, is now, and was at the date of the same, Clerk of the Court of Appeals of Maryland, and as such officer is duly authorized by the laws of Maryland to sign the same; and, further, that his signature and seal to the said Certificate I verily believe to be genuine.

In testimony whereof, I have hereunto set my hand and have caused to be hereto affixed the Great Seal of the State of Maryland,

at Annapolis, this fourth day of February, nineteen hundred and nineteen.

EMERSON C. HARRINGTON.

By the Governor:

[SEAL.]

THOS. W. SIMMONS,

*Secretary of State.*

29 II. *General Traverse.*

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, to the amended petition, a general traverse is entered as provided by Rule 34.

III. *Argument and Submission of Case.*

On May 4, 1920, this case was argued and submitted on merits by Messrs. Seth Shepard & R. B. H. Lyon, for claimant, and by Mr. Assistant Attorney General Frank Davis, Jr., and Mr. Charles H. Bradley, for defendant.

30 IV. *Findings of Fact and Conclusion of Law.*

Filed June 7, 1920.

This case having been heard by the Court of Claims, the Court, upon the evidence, makes the following

Findings of Fact.

I.

The plaintiff, the Fidelity and Deposit Company of Maryland, is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland with its principal offices in Baltimore, Maryland. It was incorporated in February 1890, under article 23 of the Code of Public Laws of Maryland, its charter being amended at different times thereafter by special acts of the legislature of that State. True copies of the general laws, charter, and special acts referred to are incorporated in plaintiff's petition, a copy of which is attached to and made a part of these findings.

II.

During the period involved the plaintiff company had a place of business in the city of Baltimore, State of Maryland, in its own office building; where it carried on the following lines of business: (1) Surety business—that is, acting as surety upon bonds conditioned for the faithful performance of duties by principals; (2) banking business—that is, receiving money upon deposit subject to be paid or remitted on checks, drafts, or order, advancing or loaning money upon stocks and bonds—and also receiving commercial paper for



collection for its depositors; (3) safe-deposit business—that is, renting safe-deposit boxes for the safe-keeping of valuables; (4) acting as trustee upon bond issues by other corporations.

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## III.

The capital stock and surplus accounts of plaintiff company during the period in question were as follows:  
For the year ending:

	Capital stock.	Surplus.
June 30, 1898.....	\$1,000,000	\$1,000,000
1899.....	1,500,000	1,850,000
1900.....	1,500,000	1,850,000
1901.....	2,000,000	2,550,000

A part of plaintiff's capital was invested in said office building. The cost value of this building and its book value, as carried by the plaintiff company during the period involved, was \$600,000. This building constituted part of plaintiff's capital. Some portion of this building was used or employed by the plaintiff in its banking business, but what proportion so used as compared with the other portions of the building used in other branches of the company's business does not appear from the evidence.

The plaintiff's company's banking business was conducted as a part of its other business, and the expenses incident to the conduct of the banking business and the salaries and wages of its officers and employees, performing duties in that business, were paid in the same manner and out of the same fund or account that all similar expenses, salaries, and wages were paid by the plaintiff in the conduct of all its business. The expenses incident to the conduct of the banking business were paid out of the undivided profits accounts, but what was the amount of such expenses so paid, or in what proportion they were to the other expenses of the plaintiff company, does not appear from the evidence.

In connection with its banking business plaintiff also conducted its safe deposit business. Some part of plaintiff's said office building was used or employed in the conduct of this safe deposit business, but what part of proportion of the building was so used does not appear from the evidence.

## IV.

The money derived from the sale of capital stock and the money of the surplus fund were permanently invested in real estate, bonds, stocks, and some few other securities, which was called by plaintiff and designated on its books as the "Capital Stock Department." The investments of the assets of this department, the capital stock money and surplus, were designated "Capital Stock Investments" and all operations of the department were recorded in distinct — from

32 the records of all other business transacted by the Company. The investments of the Capital Stock Department were kept alone in a separate compartment in the company's vault, in envelopes earmarked "C-S."

## V.

The plaintiff also maintained and operated the banking business of the company. The company received money on deposit from those whom it insured or bonded and these funds were deposited with the banking department. Credits were also opened by the deposit of moneys or currency subject to be remitted or paid upon draft, check or order, and the banking department advanced or loaned money to its customers on notes secured or supported by stocks and bonds but not by bullion, bills of exchange or promissory notes. The money received on deposit as aforesaid, during the period in question was as follows:

For the year ending:

June 30, 1898.....	\$2,632,625.66
1899.....	3,173,017.39
1900.....	3,739,275.47
1901.....	4,139,675.55

The following sums derived from the investment of these deposits were returned to the depositors as interest:

For the year ending:

Dec. 31, 1898.....	\$49,291.88
1899.....	76,255.11
1900.....	84,191.18
1901.....	86,788.78

leaving a net income derived from this business as follows:

For the year ending:

Dec. 31, 1898.....	\$43,607.64
1899.....	60,325.23
1900.....	78,275.29
1901.....	92,852.56

## VI.

The business of the banking department was kept separate from other business conducted by plaintiff. The money received from deposits was invested in stocks and bonds which were kept in separate envelopes in separate compartments of the company's vaults and earmarked "I. D." or "E. D.", respectively, according as they represented general individual deposits or deposits called "Estate Deposits" made by those bonded or insured by the company, and the records of the business of the banking department were kept in separate books as accounts separate from the accounts of the Capital Stock Department.

## VII.

Earnings from the two departments were carried to the undivided profits accounts of the company at the end of each year, after the

expenses of each department had been paid and charged to the appropriate department upon the separate accounts of that department out of the earnings of that department. A part of the income from each department was maintained as cash and remained uninvested, part of the money being carried by the respective departments as counter cash and the balance being deposited in the company's various depositories. The money so deposited was not segregated according to the source from which it came, though the source of the items comprising its total amount was recorded in the respective books of each department.

## VIII.

In each of the years in question plaintiff was required by and thereupon regularly and duly made to the Commissioner of Internal Revenue a return of its capital and surplus upon which defendants' duly authorized revenue officers assessed against and collected from plaintiff the total sum of \$8,300 as special bankers' taxes under Section 2 of the Act of June 13, 1898, as follows:

For the fiscal year ending June 30, 1898, twenty-five thousand dollars (\$25,000) at two dollars per thousand .....	\$50.00
For the year ending June 30, 1899, one million one hundred twenty-five thousand dollars (\$1,125,000) .....	2,250.00
For the year ending June 30, 1900, one million five hundred thousand dollars (\$1,500,000) .....	3,000.00
For the year ending June 30, 1901, one million five hundred thousand dollars (\$1,500,000) .....	3,000.00
Total tax on capital .....	\$8,300.00

The sums so collected were duly and regularly reported by said officers and covered into the Treasury of the United States.

Under authority of the Act of July 27, 1912 (37 Stat., 240), plaintiff on November 22, 1913, filed its application in the Treasury Department praying the refund of said sum of \$8,300 through the Collector of Internal Revenue, located in the city of Baltimore, Md., who, in the regular course of his official business, certified the same to the Treasury Department for its consideration. Its application was on the prescribed Internal Revenue form known as Form 46, revised November 1907, and was in all respects complete, regular and in accordance with the law and regulations and supported by the evidence and powers required. It alleged as ground for refund that the taxes in question were assessed and collected on plaintiff's capital and surplus, which were not used or employed in the banking business within the meaning of Section 2 of said War Revenue Act. Notwithstanding the said application for refund was rejected by the Secretary of the Treasury on April 16, 1917, and the Department has

never refunded and still refuses to refund to plaintiff the sums claimed as aforesaid.

### Conclusions of Law.

Upon the foregoing findings of fact the Court decides as a conclusion of law, that the petition herein should be, and the same is hereby, dismissed, on authority of the case of Union Trust Company of Indianapolis v. United States, 55 C. Cls. 424.

Judgment is rendered against the plaintiff for the cost of printing the record in this cause, the amount thereof to be *be* entered by the Clerk and collected according to law.

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### V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the Seventh day of June, A. D., 1920, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge and decree that the plaintiff herein is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and it hereby is dismissed on authority of the case of Union Trust Company of Indianapolis, Indiana, No. 33978, 55 C. Clms. 424; and it is further ordered, adjudged and decreed that the United States shall have and recover of and from the plaintiff herein the sum of Three Hundred and eighty-eight dollars and ninety-five cents (\$388.95) the cost of printing the record in this case, to be collected by the Clerk, as provided by law.

By THE COURT.

### VI. Proceedings After Entry of Judgment.

On August 6, 1920, claimant filed a motion for new trial and on September 24, 1920 filed a supplemental motion for new trial and for amendment of findings of fact. On January 10, 1921 these motions were overruled by the Court.

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### VII. Claimant's Application for and Allowance of an Appeal.

From the judgment rendered in the above cause on the 10th day of January, 1921 in favor of the defendant, the claimant, by its attorneys, on the 10th day of January, 1921 makes application for, and gives notice of, an appeal to the Supreme Court of the United States, the amount involved being the sum of \$8,300.00.

LYON & LYON,  
*Attorneys for Claimant.*

Filed January 10, 1921.

Ordered: That the above appeal be allowed as prayed for.

By THE COURT.

January 10, 1921.

Court of Claims.

No. 33976.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law entered by the court; of the judgment of the court; of the claimant's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Thirteenth day of January, A. D., 1921.

[Seal of the Court of Claims.]

F. C. KLEINSCHMIDT,  
*Assistant Clerk Court of Claims.*

Endorsed on cover: File No. 28,055. Court of Claims. Term No. 698. Fidelity and Deposit Company of Maryland, appellant, vs. The United States. Filed January 24th, 1921. File No. 28,055.